

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4224

IN THE MATTER OF:

Served December 15, 1993

Application of MUSTANG TOURS, INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-93-30

Investigation of Unauthorized)
Operations of MUSTANG TOURS, INC.)

Case No. MP-93-42

The investigation of unauthorized operations of Mustang Tours, Inc. (Mustang or respondent), Case No. MP-93-42, was initiated by the Commission in Order No. 4172 on September 23, 1993. Mustang was ordered to produce copies of its customer invoices for transportation performed during the period beginning July 1, 1992, and ending September 23, 1993. Mustang complied.

On October 14, 1993, Mustang (applicant), filed an application for a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District. The application was docketed as Case No. AP-93-30.

Notice of the application was served and the two proceedings were consolidated in Order No. 4189, on October 18, 1993. Mustang was directed to publish further notice in a newspaper and file an affidavit of publication. Mustang complied. The application is unopposed.

I. THE INVESTIGATION

Mustang's invoices show that from July 1992 to September 1993 respondent transported passengers for hire between points in the Metropolitan District on 240 separate occasions. Mustang did not hold a certificate of authority while performing that transportation, thus violating the Compact, Title II, Article XI, Section 6.

The Compact, Title II, Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹ The

¹ In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3914 (Mar. 25, 1992) (on reconsideration).

term "willfully" does not mean with evil purpose or criminal intent but means purposely or obstinately, with intentional disregard or plain indifference.²

The Commission advised Mustang by letter dated February 1, 1993, of the need for a certificate of authority for operations conducted in the Metropolitan District. The Metropolitan District was explicitly defined in the letter. Commission records indicate that Mustang received the letter on February 3, 1993, placing respondent on notice that its operations in the Metropolitan District might be in violation of the Compact. At that point, at the very latest, the onus was on Mustang to ensure that its operations were in compliance with the Compact.³ Accordingly, the violations occurring after February 3, 1993, are found to be knowing and willful.⁴

Mustang's invoices show that it conducted 143 trips in the Metropolitan District on 125 separate days after February 3, 1993, for a total of 125 knowing and willful violations. The amount of revenue received from those operations was \$31,236.50. Judging from Mustang's income statement for that period, filed as part of its application, the corresponding net profit was approximately \$10,000, exclusive of any provision for driver's wages. Any reasonable adjustment for driver's wages would yield minimal net income.

The Commission will assess a civil forfeiture against Mustang in the amount of \$250 per violation, for a total of \$31,250. The Commission will suspend all but \$2,000, in recognition of the negligible profit realized by respondent from its unlawful conduct.⁵

II. THE APPLICATION

Mustang's application includes information regarding, among other things, its corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

SUMMARY OF EVIDENCE

Mustang proposes to commence operations with one 47-passenger motor coach. Applicant's proposed tariff contains flat rates for airport transfer service and hourly rates with minimum charges for charter service.

Mustang's vice president certifies on its behalf that applicant has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

² In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992).

³ In re Omnibus Corp., No. 380, Order No. 1762 (Oct. 26, 1977).

⁴ Order No. 3914; Order No. 1762.

⁵ See Order No. 3891 (forfeiture partly suspended in absence of unjust enrichment).

Applicant filed a balance sheet as of June 30, 1993, showing current assets of \$40,246; net property and equipment of \$26,383; liabilities of \$94,675; and negative equity of \$28,046. Applicant's combined statements of income and expense for the eighteen months ended June 30, 1993, show net sales of \$108,497; expenses of \$86,648; and net income of \$21,849. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$71,000; other operating income of \$67,600; operating expenses of \$117,418; and net income of \$21,182.

It is certified that neither Mustang nor any person controlling, controlled by, or under common control with Mustang has any control relationship with a carrier other than Mustang.

DISCUSSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

- (i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
- (ii) that the transportation is consistent with the public interest.

The burden is on applicant to establish its financial fitness, operational fitness, and regulatory compliance fitness.⁶

Applicant's balance sheet shows a history of losses. Its current income statements, however, demonstrate it is now earning a profit. Applicant has a satisfactory United States Department of Transportation safety rating, and its vehicle recently passed a Maryland Public Service Commission safety inspection. We find applicant financially and operationally fit.

Mustang's compliance fitness is another matter. A determination of compliance fitness is prospective in nature. Order No. 3891. When an applicant has a record of violations the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁷

⁶ In re CRW Transp. Sys. Enters., No. AP-85-26, Order No. 2817 (Jan. 22, 1986); In re Dav-El of Wash., D.C., Inc., No. AP-85-14, Order No. 2773 (Oct. 11, 1985); In re Battle's Transp., Inc., No. AP-85-12, Order No. 2722 (June 20, 1985).

⁷ Order No. 3891.

The nature of the 125 violations was operating without authority. Few violations are more serious. We find no mitigating circumstances. We regard the violations as borderline flagrant and persistent. On the other hand, Mustang has cooperated completely in the investigation. The filing of an application demonstrates Mustang's willingness to abide by the Compact and regulations thereunder in the future, as Mustang has sworn. Upon payment of the assessed forfeiture, Mustang's atonement for past transgressions will be complete. The record, therefore, supports a finding of prospective compliance fitness.

Based on the evidence in this record, the Commission finds Mustang to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest.

III. CONCLUSION

The Commission approves the application of Mustang for a certificate of authority subject to Mustang's duty to pay the forfeiture herein assessed. Failure to pay the assessed forfeiture in timely fashion shall constitute sufficient grounds for suspension and revocation of Mustang's certificate without further proceedings and shall result in reinstatement of the full \$31,250 forfeiture.

THEREFORE, IT IS ORDERED:

1. That Mustang Tours, Inc., 3376 Crumpton South, Laurel, MD 20724, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

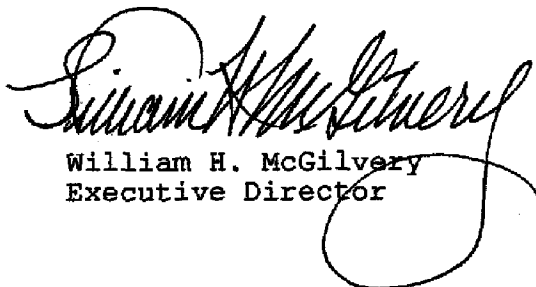
2. That Mustang Tours, Inc., is hereby directed to pay to the Commission by money order, certified check, or cashiers check the sum of two thousand dollars (\$2,000).

3. That Mustang Tours, Inc., is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 238 is hereby assigned.

4. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 238 shall be issued to Mustang Tours, Inc.

5. That unless Mustang Tours, Inc., complies with the filing requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director